



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,708	10/02/2003	Jerry H. Stoller	SLRE.103540	9195
7590	10/05/2007		EXAMINER [REDACTED]	
Walter R. Brookhart Shook, Hardy & Bacon LLP Suite 1600 600 Travis Houston, TX 77002			PRYOR, ALTON NATHANIEL	
			ART UNIT [REDACTED]	PAPER NUMBER 1616
			MAIL DATE 10/05/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/677,708	STOLLER, JERRY H.
	Examiner	Art Unit
	Alton N. Pryor	1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 12 July 2007.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,6-18 and 20-70 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,6-18,20-31,33-57 and 59-70 is/are rejected.
- 7) Claim(s) 32 and 58 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

Art Unit: 1616

## DETAILED ACTION

Applicant's arguments, see paper, filed 7/12/06 and 7/13/07, with respect to the rejection(s) of claim(s) 1-70 under 35 USC 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made below.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1,6-18,20-27,34-53,60-70 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not exemplify, define or explain what is meant by auxin (IBA, IAA) derivatives, metabolites, precursors, etc.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

The term "auxin (IAA, IBA) derivatives, metabolites, precursors, etc." in claims 1,6-18,20-27,34-53,60-70 is a relative term which renders the claim indefinite. The term "auxin (IAA, IBA) derivatives, metabolites, precursors, etc." is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and

one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. What is meant by the term "auxin (IAA, IBA) derivatives, metabolites, and precursors"?

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,5-7,18,20-23,25-29,33-39,48-55,60-62,64,66-68 are rejected under 35 U.S.C. 102(b) as being anticipated by Ogbonna et al (Effect of seed-pretreatment with some plant growth regulators on germination, growth and yield of cowpea, Nippon Sakumotsu Gakkai Kiji, 1989, 58(4), 641-7). Ogbonna teaches the pretreatment of cowpea seeds with indole acetic acid (IAA) and indole butyric acid (IBA). The instant invention teaches the active step of applying IAA and IBA to seed. Since instant invention like Ogbonna teach the same active step of treating seed with IAA and IBA, it is inherent that Ogbonna's treatment of seed would inhibit the growth of fungi / organisms on and in plant tissues. See abstract.

Claims 1,6,7,13,25-27,33-35,37-39,43-45,48,49,51-54,57 are rejected under 35 U.S.C. 102(b) as being anticipated by Prasad et al (Physio Therapy of Rice Plant against the root-knot nematode meloidogyne-graminicola, Biological Sciences, 1976, vol. 42 no. 6, pp. 295-298). Prasad teaches a method of treating foliage with naphthyl acetic acid (NAA) and indole butyric acid (IBA) or applying said chemicals as a

Art Unit: 1616

soil drench. The instant invention teaches the active step of applying NAA and IBA to foliage. Since instant invention like Prasad teach the same active step of treating foliage with IAA and IBA, it is inherent that Prasad's treatment of foliage would inhibit the growth of fungi / organisms on and in plant tissues. See abstract.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-10,14,30,31,40-42,56,59,63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogbonna as applied to claims 1,5-7,18,20-23,25-29,33-39,48-55,60-62,64,66-68 above. Ogbonna teaches all the is recited in claims 8-10,14, 30,31, 40-42, 56, 59,63 except for the invention comprising 1) the instant amount of auxin to seed and 2) the auxin being applied as a dry powder or an aqueous solution. One having ordinary skill in the art would have been expected to determine the optimum amount of auxin to apply to the seed. Determining the optimum amounts of ingredients is a standard practice in the art. In the absence of unexpected data all modes of applying auxin to seed, including applying as a dust or an aqueous solution, would have been expected to be effective.

Claims 14,22,23,40-42,59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prasad as applied to claims 1,6,7,13,25-27,33-35,37-39,43-45,48,49,51-54,57 above. Prasad teaches all that is recited in claims 14,22,23, 40-42,59

Art Unit: 1616

except for the invention comprising 1) the instant amount of auxin to foliage or soil and 2) the auxin being applied as a dry powder. One having ordinary skill in the art would have been expected to determine the optimum amount of auxin to apply to foliage or soil. Determining the optimum amounts of ingredients is a standard practice in the art. In the absence of unexpected data all modes of applying auxin to seed, including applying as a dust or an aqueous solution, would have been expected to be effective. The application of the chemicals as a soil drench suggests the application of the chemicals to the root system.

***Claim Objection / Election Requirement***

Claims 32 and 58 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not teach or suggest the invention comprising metals of the claims. Election requirement is withdrawn.

***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1616

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Alton Pryor  
Primary Examiner  
AU 1616